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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/831,431	07/13/2001	Bettina Jackwerth	H3739PCT/US	4200

23657 7590 04/01/2002

COGNIS CORPORATION
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EXAMINER

YU, GINA C

ART UNIT PAPER NUMBER

1617

DATE MAILED: 04/01/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/831,431

Applicant(s)

JACKWERTH ET AL.

Examiner

Gina C. Yu

Art Unit

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—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 15 March 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: No amendment was proposed.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See next pages.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

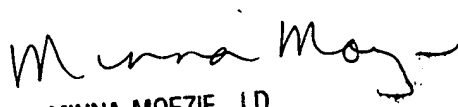
Claim(s) allowed: None.

Claim(s) objected to: None.

Claim(s) rejected: 11-20.

Claim(s) withdrawn from consideration: None.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


MINNA MOEZIE, J.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600
Part of Paper No. 10

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Continuation to No. 5.

The obviousness rejection is maintained for reasons of record as indicated in the previous office action dated January 15, 2002.

Applicants' argument that there would be no motivation to modify the compositions of Prat and Ponsati Obiols for there is no known defect of the compositions therein is unpersuasive. Examiner notes that applicants provide no legal standard to support such position. As discussed in the previous office action, the obviousness of the present invention has been determined by the office in view of the combined teachings of the references, i.e., Prat, Ponsati Obiols *and Inmai*.

Examiner also views that the issue phrased by applicants does not address the motivation statement of the rejection. The issue is not whether one with ordinary skill in the art who is given the teachings of Prat and Ponsati Obiols would seek out to modify their invention, as applicants have stated. Rather, the issues to the present case were in two parts: whether, given the general teaching of esterquat, dispersants, and emulsifiers in Prat, a routineer *would have seeked out to Ponsati Obiols* for the specific dispersants and emulsifiers suitable to use with esterquat; and whether, also given the teaching of Inman et al. about the conditioning oil conventionally used in hair shampoo composition, the skilled worker would have been then motivated to incorporate that component to the shampoo formulation of Prat and Ponsati Obiols. See office action dated September 27, 2001, p. 4, lines 3-10. Whether the inventions in Prat and Ponsati Obiols are defective or not has never been an issue in this case.

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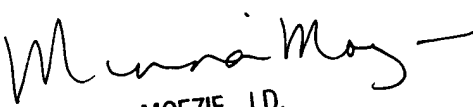
Regarding applicants' argument that Inmai does not provide motivation to add the conditioning oils to the inventions in Prat and Ponsati Obiols, examiner maintains the position for reasons of record as indicated in final action dated January 15, 2002. Even if the routineer expected that the conditioning oils are to be used only with the cationic polymers, as applicants argue, the claimed composition is still viewed obvious over the prior arts. This is because the scope of the instant claims is so broad as not to exclude the presence of the cationic polymers of Inmai in the combination of the claimed components. See MPEP 2111.03 (explaining transitional phrases).

In this case, nothing unexpected is seen in incorporating the conditioning oils conventionally used in shampoo formula. There is no evidence on the record to indicate any unexpected results for a combination of the conventional ingredients well known in the art. See MPEP 716.02.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-308-3951.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Minna Moezie can be reached on 703-308-4612. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina Yu
Patent Examiner
March 29, 2002


MINNA MOEZIE, J.D.
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600